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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Fikirite Fentaw Eshetu,)
vs. Plaintiff,)
Amazon Human Resource,)
Defendant.)
No. CV-24-03190-PHX-SPL
ORDER

Before the Court is Defendant's Second Motion to Dismiss (Doc. 15), Plaintiff's Response (Doc. 17), and Defendant's Reply (Doc. 18). The Court now rules as follows.

I. BACKGROUND

Pro se Plaintiff Fikirite Fentaw Eshetu is a former employee of Amazon’s PHX 6 warehouse whose employment was terminated on May 21, 2022. (Doc. 1-2 at 8). Plaintiff alleges that she faced discrimination at her workplace and was terminated due to her age, race, and national origin. (*Id.* at 9). Plaintiff further alleges that her termination was in retaliation for her complaints about workplace harassment, intimidation, and discrimination from her fellow employees and supervisors. (*Id.*).

On April 30, 2024, Plaintiff filed suit against Defendant Amazon Human Resources in Maricopa County Superior Court. (Doc. 1-2). Defendant was not served until October 23, 2024. (Doc. 1-5 at 2). On November 13, 2024, Defendant removed the case to federal court. (Doc. 1). Defendant filed a Motion to Dismiss on November 20, 2024. (Doc. 6). The Court granted that Motion on January 28, 2025, finding that Plaintiff failed to allege facts

1 demonstrating that she exhausted her administrative remedies with the EEOC as required
 2 before filing the present action. (Doc. 12). The Court granted Plaintiff leave to amend to
 3 allege facts that she timely filed an EEOC charge prior to filing this action, or alternatively,
 4 facts supporting an argument that equitable tolling, estoppel, or waiver should toll the 300-
 5 day filing requirement for an EEOC charge. (*Id.* at 4). On February 13, 2025, Plaintiff filed
 6 an Amended Complaint that appears to serve as a supplement to her initial complaint (Doc.
 7 13), and on February 21, 2025, Plaintiff filed a Supplement to her Amended Complaint
 8 (Doc. 14). Defendant subsequently filed the present Motion to Dismiss Plaintiff's
 9 Amended Complaint. (Doc. 15).

10 **II. LEGAL STANDARD**

11 “To survive a Rule 12(b)(6) motion for failure to state a claim, a complaint must
 12 meet the requirements of Rule 8.” *Jones v. Mohave Cnty.*, No. CV 11-8093-PCT-JAT,
 13 2012 WL 79882, at *1 (D. Ariz. Jan. 11, 2012); *see also Int'l Energy Ventures Mgmt.,*
 14 *L.L.C. v. United Energy Grp., Ltd.*, 818 F.3d 193, 203 (5th Cir. 2016) (Rule 12(b)(6)
 15 provides “the one and only method for testing” whether pleading standards set by Rule 8
 16 and 9 have been met); *Hefferman v. Bass*, 467 F.3d 596, 599–600 (7th Cir. 2006) (Rule
 17 12(b)(6) “does not stand alone,” but implicates Rules 8 and 9). Rule 8(a)(2) requires that a
 18 pleading contain “a short and plain statement of the claim showing that the pleader is
 19 entitled to relief.” Fed. R. Civ. P. 8(a)(2). A court may dismiss a complaint for failure to
 20 state a claim under Rule 12(b)(6) for two reasons: (1) lack of a cognizable legal theory, or
 21 (2) insufficient facts alleged under a cognizable legal theory. *In re Sorrento Therapeutics,*
 22 *Inc. Secs. Litig.*, 97 F.4th 634, 641 (9th Cir. 2024) (citation omitted). A claim is facially
 23 plausible when it contains “factual content that allows the court to draw the reasonable
 24 inference” that the moving party is liable. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
 25 Factual allegations in the complaint should be assumed true, and a court should then
 26 “determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679. Facts
 27 should be viewed “in the light most favorable to the non-moving party.” *Faulkner v. ADT*
 28 *Sec. Servs., Inc.*, 706 F.3d 1017, 1019 (9th Cir. 2013). “Nonetheless, the Court does not

1 have to accept as true a legal conclusion couched as a factual allegation.” *Jones*, 2012 WL
 2 79882, at *1 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

3 III. DISCUSSION

4 As stated in the Court’s January 28, 2025 Order (Doc. 12 at 2–3), to pursue a civil
 5 action for discrimination under Title VII or the ADEA, a plaintiff must first exhaust
 6 administrative remedies before seeking adjudication of her claims. *Lyons v. England*, 307
 7 F.3d 1092, 1103 (9th Cir. 2002); 42 U.S.C. § 2000e–5; 29 U.S.C. § 626(d); *Albano v.*
 8 *Schering-Plough Corp.*, 912 F.2d 384, 386 (9th Cir. 1990). This requirement serves the
 9 important purpose of providing the EEOC an opportunity to investigate discriminatory
 10 practices and perform its roles of obtaining voluntary compliance and promoting
 11 conciliation. *See B.K.B. v. Maui Police Dep’t*, 276 F.3d 1091, 1099 (9th Cir. 2002),
 12 *abrogated on other grounds by Fort Bend Cnty., Texas v. Davis*, 587 U.S. 541 (2019).
 13 Exhaustion of administrative remedies requires the claimant to file a timely charge with
 14 the EEOC. *Lyons*, 307 F.3d at 1104. In Arizona, a Title VII claim must be filed within 300
 15 days of the alleged unlawful employment practice in order to be timely. *See Hernandez v.*
 16 *Maricopa Cnty. Cnty. Coll. Dist.*, No. CV-21-00742-PHX-DJH, 2022 WL 103528, at *4
 17 (D. Ariz. Jan. 11, 2022); *see also Day v. LSI Corp.*, 174 F. Supp. 3d 1130, 1163 (D. Ariz.
 18 2016). When the EEOC dismisses a claim, it must notify the claimant of the dismissal and
 19 that he or she has 90 days to bring a Title VII civil action. *Scholar v. Pac. Bell*, 963 F.2d
 20 264, 266 (9th Cir. 1992) (citing 42 U.S.C. § 2000e–5(f)(1) (1988)). This 90-day period
 21 serves as a statute of limitations, and a claim is time-barred if a claimant fails to file within
 22 those 90 days. *Id.*

23 The Court finds that Plaintiff’s Amended Complaint sheds light on the status of her
 24 administrative remedies. Plaintiff’s Amended Complaint alleges that she filed a charge of
 25 discrimination with the EEOC on February 5, 2024. (Doc. 13 at 1). The Amended
 26 Complaint also includes as an attachment a Dismissal and Notice of Rights letter from the
 27 EEOC, dated February 9, 2024, in which the EEOC rejected the charge because it was
 28 untimely filed and provided Plaintiff Notice of her Right to Sue within 90 days of receipt

1 of that Notice. (Doc. 13-1 at 2). Thus, the Court finds that Plaintiff filed her charge with
 2 the EEOC on February 5, 2024, well beyond 300 days since the last alleged unlawful
 3 employment practice, which occurred on May 21, 2022, and is therefore time-barred.

4 Filing a timely EEOC charge “is not a jurisdictional prerequisite to suit in federal
 5 court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and
 6 equitable tolling.” *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982). For a
 7 statute of limitations to be equitably tolled, plaintiffs “must establish that they pursued their
 8 rights diligently and that some extraordinary circumstances stood in the way.” *WildEarth
 9 Guardians v. U.S. Dep’t of Just.*, 181 F. Supp. 3d 651, 671 (D. Ariz. 2015). Such
 10 “extraordinary circumstances include situations where the claimant has actively pursued
 11 his judicial remedies by filing a defective pleading during the statutory period, or where
 12 the complainant has been induced or tricked by his adversary’s misconduct into allowing
 13 the filing deadline to pass.” *Id.* (internal quotation marks omitted); *see also Samaniego-
 14 Lugo v. Ryan*, No. CV-11-00623-TUC-RCC, 2013 WL 1789503, at *2 (D. Ariz. Apr. 26,
 15 2013) (“In some cases, mental illness can constitute an extraordinary circumstance beyond
 16 a petitioner’s control that warrants equitable tolling.”); *Cruz v. Ramirez-Palmer*, 50 F.
 17 App’x 367, 367 (9th Cir. 2002) (serious illness may warrant equitable tolling).

18 In this case, Plaintiff sets forth no facts showing that the statute of limitations should
 19 be tolled as this Court instructed in its January 29, 2025 Order. (Doc. 12 at 5). In Plaintiff’s
 20 Supplement to her Amended Complaint, Plaintiff provides an attestation that she went to
 21 the EEOC office and received the contact information of EEOC Supervisory Investigator
 22 Patricia Miner. (Doc. 14 at 2). Plaintiff states that she called Patricia Miner before leaving
 23 the EEOC office, that Ms. Miner emailed Plaintiff a pre-charge inquiry form, and that Ms.
 24 Miner subsequently sent her the EEOC Charge of Discrimination Form. (*Id.*). Plaintiff
 25 attached various emails from Ms. Miner. (*Id.* at 3–6). These emails indicate that the initial
 26 phone call between Ms. Miner and Plaintiff took place on January 25, 2024 (*Id.* at 3), and
 27 that Ms. Miner correctly informed Plaintiff that her Pre-Charge Inquiry form indicated that
 28 she had missed the 300-day deadline for timely filing an EEOC charge. (*Id.* at 4).

1 Additionally, a February 1, 2024 email from Ms. Miner informed Plaintiff that the EEOC
 2 does “not deny anyone the right to file a Charge of Discrimination” and that she would
 3 send a form if Plaintiff wished to proceed; explained that the EEOC would process it, close
 4 the case, and issue a Notice of Right to Sue; and advised that Plaintiff “would have to file
 5 a lawsuit in state or federal court to proceed” and attached an attorney list. (*Id.*). Plaintiff
 6 does not assert that she attempted to contact the EEOC prior to January 25, 2024. As such,
 7 the Court finds that this is not a case in which an EEOC representative misinformed or
 8 misled Plaintiff about her claim and, in doing so, caused her to fail to exhaust her
 9 administrative remedies. *See Josephs v. Pac. Bell*, 443 F.3d 1050, 1054 (9th Cir. 2006)
 10 (“An equitable exception to the exhaustion requirement is available when an EEOC
 11 representative misleads the plaintiff concerning his claim.”).

12 Additionally, the Court cannot conclude that equitable tolling is warranted from any
 13 other facts included in the Amended Complaint. Attached to the Amended Complaint is
 14 what appears to be an email regarding an “Appointment Follow-Up” from “Ironwood
 15 Cancer & Research Centers.” (Doc. 13-1 at 5). From this alone, the Court cannot infer that
 16 “extraordinary circumstances” prohibited Plaintiff from diligently pursuing her rights.
 17 Notably, the email seeks Plaintiff to confirm an appointment on April 16, 2024, which was
 18 nearly two years after the last alleged unlawful employment practice. (*Id.*). Although
 19 Plaintiff asserted in her Response to Defendant’s first Motion to Dismiss that “I have been
 20 going through a lot . . lymphoma,” (Doc. 8 at 4) and appears to indicate in her Response
 21 that she has or had lymphoma (Doc. 17 at 4), Plaintiff did not provide any further factual
 22 allegations in her Amended Complaint regarding any illness, how she diligently pursued
 23 her rights prior to the EEOC filing deadline, or how any illness stood in the way of her
 24 pursuing those rights. In her Response, Plaintiff also references a trip to Africa and asserts
 25 that she returned to the United States in September 2023 (*Id.* at 6), but she does not provide
 26 any information as to when she initially left the United States for Africa or why she was
 27 unable to pursue her EEOC charge before she left or after she returned in September 2023.

28 All told, Plaintiff’s Amended Complaint reveals that she untimely filed her EEOC

1 charge after the 300-day deadline. Plaintiff has not demonstrated that this deadline should
 2 be equitably tolled, and therefore, dismissal is warranted. However, “[a] district court
 3 should not dismiss a pro se complaint without leave to amend unless it is absolutely clear
 4 that the deficiencies of the complaint could not be cured by amendment.” *Akhtar v. Mesa*,
 5 698 F.3d 1202, 1212 (9th Cir. 2012) (internal quotation marks omitted). Here, additional
 6 facts may exist that warrant equitable tolling of untimely EEOC charge. As such, Plaintiff
 7 will be granted leave to file a Second Amended Complaint.

8 **IV. CONCLUSION**

9 For the foregoing reasons, Plaintiff’s Amended Complaint must be dismissed.
 10 However, as noted in this Court’s previous dismissal Order (Doc 12 at 4), district courts
 11 “have an obligation where the petitioner is pro se, particularly in civil rights cases, to
 12 construe the pleadings liberally and to afford the petitioner the benefit of any
 13 doubt.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation omitted). A district
 14 court must also provide pro se litigants notice of deficiencies in their complaints and allow
 15 them opportunity to amend before dismissing the complaint. *Id.*; *see also Flowers v. First*
Hawaiian Bank, 295 F.3d 966, 976 (9th Cir. 2002) (“We are very cautious in approving a
 16 district court’s decision to deny pro se litigants leave to amend.”). Thus, the Court will
 17 grant Plaintiff leave to amend to cure the deficiencies identified in this Order.
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19 If Plaintiff chooses to file a Second Amended Complaint, Plaintiff should provide
 20 facts that plausibly show that, despite her due diligence, she was unable to discover facts
 21 during the limitations period suggesting that she was a victim of unlawful discrimination
 22 or that extraordinary circumstances prevented her from filing her charge with the EEOC
 23 within the 300-day time limit, if such facts exist.¹

24 Plaintiff is advised that a Second Amended Complaint will supersede the original

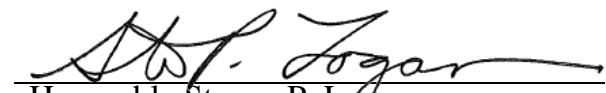
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 26 ¹ Should Plaintiff file an amended complaint, and should Defendant believe the
 27 amended complaint fails to state a claim, Plaintiff must cooperate with Defendant’s efforts
 28 to meet and confer regarding the asserted deficiencies in accordance with LRCiv 12.1(c).
 If Defendant is still unable to reach Plaintiff, any certification of conferral filed by
 Defendant must state specifically how and when Defendant made its attempts to contact
 Plaintiff.

1 Complaint and the First Amended Complaint. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th
2 Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir.
3 1990). After amendment, the Court will treat the original Complaint and the First Amended
4 Complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action raised therein that
5 was voluntarily dismissed or was dismissed without prejudice is waived if it is not alleged
6 in a second amended complaint. *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
7 2012) (en banc). Accordingly,

8 **IT IS ORDERED** that Defendant's Second Motion to Dismiss (Doc. 15) is
9 granted.

10 **IT IS FURTHER ORDERED** that on or before **June 4, 2025**, Plaintiff may file a
11 Second Amended Complaint curing the defects identified in this Order. If Plaintiff does
12 not file a Second Amended Complaint by that date, this action will be dismissed without
13 further notice.

14 Dated this 7th day of May, 2025.

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17 Honorable Steven P. Logan
18 United States District Judge
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